

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 00-05

July 20, 2000

TO: All Regional Directors, Officers-in-Charge, and Resident Officers**FROM:** Leonard R. Page, General Counsel**SUBJECT:** Daily Compounding of Interest on Backpay and Other Monetary Awards

Under current practice the Board's remedial orders do not provide for the compounding of interest on monetary awards. As a result, discriminatees are often deprived of a true "make whole" remedy, particularly where the payment of backpay is delayed for extended periods of time. Moreover, the current practice operates as a significant disincentive to the early settlement of cases, thereby impeding the Agency's ability to better effectuate the policies of the Act.

In recognition of this problem, the General Counsel, beginning in 1989, sought the adoption in a number of cases presented to the Board of a policy pursuant to which interest on backpay and other monetary awards would be compounded on a daily basis. In response, the Board issued a decision stating that it was "taking the matter under advisement." See *Alaska Pulp Corp.*, 300 NLRB 232, n.4 (1990).

Subsequently, the Board published in the Federal Register a Notice of proposed rulemaking soliciting comments, *inter alia*, on the proposed implementation of a rule under which all interest awarded on backpay and other monetary awards would be compounded daily.

Following review of the comments received in response to the Notice of proposed rulemaking, the Board has determined that it would prefer to consider this matter further in the context of an actual case or cases, rather than through rulemaking. Accordingly, the General Counsel will, in the context of the cases identified herein, request that the Board reconsider its practice of awarding only simple interest on backpay and other monetary remedies and recommend that such interest be compounded on a daily basis. The attached cases were selected as a result of a recent survey conducted by the Division of Operations-Management and include cases pending before the Board for exceptions or cross-exceptions and cases scheduled for trial before an ALJ.

A model "Supplemental Brief in Support of Compounding Interest" to be filed in all cases noted in the attachment is also included. (Permission to exceed page

limitations should be sought as required). For the sake of clarity, it should be made noted that compounding of interest is not in the nature of a special remedy but will be sought in all cases involving a monetary remedy should the Board accept this principle. It is not presently being sought in all cases simply as an exercise of prosecutorial discretion and to avoid overburdening the Board.

Those Regions with selected cases scheduled for trial should proceed by orally notifying the respondent, followed by written confirmation of such notice. Where time permits, outstanding complaints should be amended to plead a backpay or other monetary remedy which will include interest compounded daily. Regional Directors are asked to notify the Division of Advice and the Contempt Litigation and Compliance Branch immediately upon settlement of any cases selected.

Any questions should be addressed to the Division of Advice.

/s/
L. R. P.

Attachments (2)

cc: NLRBU

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LIST OF SELECTED CASES

Case Name	Case No.	Status
Sun Company, Inc.	4-CA-27772	7/18 Trial
USF Logistics, Inc.	4-CA-28907	10/3 Trial
Carmic Mfg., Inc.	4-CA-28803	10/6 Trial
Herre Bros., Inc.	5-CA-27807	ALJD issued
Indiana Hospital, Inc.	6-CA-30840	ALJD issued
Accurate Wire Harness	9-CA-36910, 37007	ALJD pending
North Alabama Electric Coop	10-CA-31948	7/29 Trial
American Water Heater Co.	10-CA-32081	7/29 Trial
Southwest Community	13-CA-38382	7/26 Trial
Consolidated Stores	15-CA-15359	8/8 Trial
Commercial Erectors, Inc.	17-CA-20046	ALJD issued
South Coast Refuse	21-CA-	ALJD issued
Powers Lake Construction	30-CA-14926	7/24 Trial
Industrial Heat Transfer	30-CA-14984	9/11 Trial
Hartford Care Center	30-CA-14981	10/10 Trial
Pacific Rock	36-CA-8669	8/8 Trial